Missouri Department of Natural Resources

Clean Water Commission
Water Protection Program

Meeting Minutes

March 10, 2004

MISSOURI CLEAN WATER COMMISSION MEETING
March 10, 2004
Governor's Office Building
200 Madison St.
Jefferson City, Missouri Department of Natural Resources

MINUTES

Present
Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Michael Alesandrini, STL RCGA, French Village, Missouri
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri
Dale Behnen, Peerless Landfill, Inc., High Ridge, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Robert J. Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
John Bryan, The Poultry Federation, Jefferson City, Missouri
John Carter, The Doe Run Co., Viburnum, Missouri
Randy Clarkson, Bartlett & West Engineers, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, MDC, Columbia, Missouri
Tom Engle, Duckett Creek Sanitary District, St. Peters, Missouri
Kelly Goss, Gredell Engineering, Jefferson City, Missouri
Tom Gredell, Gredell Engineering, Jefferson City, Missouri
Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri
James Helgason, Department of Natural Resources, Kansas City, Missouri
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri
John Hoke, Department of Natural Resources, Jefferson City, Missouri
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Terry A. Hume, CTR Consulting, Clinton, Missouri
Duncan Kincheloe, MO Public Utility Alliance, Jefferson City, Missouri
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Jody Mayes, Department of Natural Resources, Lees Summit, Missouri
James Mellem, City of Kansas City, Kansas City, Missouri
Charles Mobley, City of O'Fallon Public Works, O'Fallon, Missouri
Kenneth C. Morgan, City of O'Fallon, O'Fallon, Missouri
Susan Myers, MSD, St. Louis, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri

David Potthast, Department of Natural Resources, Jefferson City, Missouri
Amy Randles, Attorney General's Office, Jefferson City, Missouri
Ted Salveter, City Utilities of Springfield, Springfield, Missouri
Randy Sarver, Department of Natural Resources, Jefferson City, Missouri
Candy Schilling, Department of Natural Resources, Jefferson City, Missouri
Debbie Schnedler, Lamont Financial Services, Hartsburg, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Chris Schwedtmann, Midwest Environmental Consultants, Jefferson City, Missouri
Elena Seon, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Karl Tyminski, MSD, St. Louis, Missouri
Bob Veenstra, URS Corp./St. Louis RCGA, St. Louis, Missouri
Tom Wallau, MEC Water, Columbia, Missouri

Administrative Matters

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:07 a.m. and introduced Commissioners Easley, Kelly, Hauser, Minton, Greene, and Perry. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Amy Randles, and Acting Secretary Malinda King.

Mr. Jim Hull introduced Ms. Marlene Kirchner. She is the new secretary to the Clean Water Commission.

Adoption of January 28, 2004 Clean Water Commission Meeting Minutes

Chairman Herrmann reported he went back to his old notes and minutes from the December 11 meeting and he had asked a question about the new standard proposed changing fecal cloriform to ecoli. His notes say that he was told the new standard would be 156 cfu's per 100 ml. Pages 18 and 19 of the January 28 minutes show 126. He would like clarification as to what is the proposed new standard.

Ms. Becky Shannon, Section Chief of the Watershed Protection Section, replied 126 is proposed.

Chairman Herrmann asked if there were any other corrections/additions or changes to the minutes. Commissioner Greene replied she had a change on page 37. She is referred to as a he.

Chairman Herrmann asked if there were any other corrections or changes. Hearing none Chairman Herrmann entertained a motion to accept the minutes and enter them into the record.

Commissioner Hauser moved to adopt the January 28, 2004 Clean Water Commission meeting minutes with Chairman Herrmann's and Commissioner

Greene's corrections. Commissioner Greene seconded the motion. Commissioners Easley, Greene, Hauser, Kelly and Chairman Herrmann voted yes. Commissioners Minton and Perry abstained.

Final Action on Proposed Rule 10CSR 20-7.050 Methodology for Development of Impaired Waterbody List as Required by Section 303(d)
Phil Schroeder, Chief of the Water Quality Monitoring and Assessment Section, reported on the final action on proposed rule 10CSR 20-7.050, the Methodology for Development of Impaired Waterbody List.

Mr. Schroeder reported he was there before the Commission to ask them to take action on a proposed rule to describe the process the department will use in developing the list of impaired waters that is required under Section 303(d) of the federal Clean Water Act. The public was afforded an opportunity to comment on this proposed rule during a public comment period that ran from December 15, which is the date of the Missouri Register Publication, to February 11, 2004. In addition, the public was afforded an opportunity to verbally comment on this rulemaking during a public hearing held January 28, 2004.

The department asked the Commission to consider the comments that were made on the proposed rulemaking and the responses the department has written to those comments, as well as the proposed revisions that are being presented to the Commission. Upon the adoption of the final order, the department will move toward publishing the proposed final order in the Missouri Register at the first available opportunity. When it is finally published in the code, it will be effective 30 days after that. That would probably be sometime around mid-July.

The Commissioners had in their briefing packets the department's written responses to the comments that were made during the public comment period and hearing. Chairman Herrmann commented that he noted 28 references in the responses to the Listing Methodology document.

Phil Schroeder responded that he had hoped to provide a copy of the *Methodology for the Development of the Section 303(d) List in Missouri* to the Commission prior to the meeting so they would have had time to review it. There may be some questions that come up or some issues that relate to that document. The department had received four or five letters in response to the proposed rule. The comments made in those letters were taken and defined into 31 separate comments. Those are listed in the briefing packet. Mr. Schroeder explained he could go through each comment and describe the response or he could summarize the major issues contained within those comments and give the Commissioners a summary of how the department reacted.

Mr. Schroeder summarized there are basically four areas of concern in the comments. The first one is - - what data qualifies as good data? What qualifies it at being good enough to use in the 303(d) Listing Methodology? The department reflects on the fact that EPA guidance tells us that we should use all scientifically defensible data. Looking

back at that as guidance, the department provides a little bit of specificity in terms of how they define that by looking at the various levels of data quality. It is defined from Level 1 to Level 4. Level 1 being the least useable, to level 4 being the most useable. Data becomes more useable as it becomes more relative to a greater number of samples or the number or variety of constituents measured by those samples. It also becomes more valuable if you have a quality assurance plan that backs up how the sampling process is done. The rule, the way it is written, and some of the modifications made to it, outlines the proper framework to be able to make those determinations. One of the things that needs to be considered is that a lot of what the department is trying to put into rule actually comes from EPA guidance. Because it's guidance, it's not something EPA would dictate to the state to do and it can often change without advance notice or a lot of public comment. The department would like to be able to reserve some ability to be able to react to EPA's changes and guidance procedures. If the department were to put a lot detail into the rule, with respect to how data is to be used, then the department has put themselves at a disadvantage. EPA helps them identify new methodologies, new ways to use data to properly make these decisions, that if the department is bound by their own rule, then they may have to a wait a substantial period before they can actually utilize some new ideas.

Mr. Schroeder stated the other issue that was fairly measured in the comments is how will the data actually be used once it's determined that data is of good quality. How will it be used in developing the 303(d) list? One of the major confusing points in the way the rule was written is there are really two work products. There is a 305(b) report, which is a report that's required to be submitted to EPA on a regular basis. That is describing the conditions of all waters of the state. It actually asks that it be categorized in five different categories, with only the fifth category being those waters that merit listing under the 303(d) list. The 303(d) list is a listing of those waters that have actually been determined to be impaired. There is some use that cannot be attained because of a pollutant. Mr. Schroeder explained the rule was written to address how data is assessed and reported for both the 305(b) report and 303(d) list. Sometimes when looking at how the data is to be used, it's being looked at only with regard to how it's to be used in developing the 305(b) report as opposed to the 303(d) list.

Mr. Schroeder pointed out some of the areas that raise primary concern is the use of narrative criteria. These are general criteria under water quality standards. They are called the "free from" standards. This is if you can make a visual observation that there are certain levels of contaminants observable in the water, a proper assessment can be made that the water body is impaired. Whenever there is a water quality standard's violation, there is a presumption made that the violation is leading to an impairment. There is a connection there that when you find a standard that's being exceeded in a classified water body, that is a basis and a reason to make a listing under the 303(d) section. Narrative criteria, being something that is a standard, is something that can be measured, that can be documented and be scientifically defensible, therefore, can be a reason why a water can be placed on the 303(d) list.

Mr. Schroeder spoke about habitat assessments, the wadeable streams where the department goes out and makes assessment based on the habitat that exists there and try to draw conclusions based on the quality of the habitat in the stream. The rule states that in order to place the water on the 303(d) list as impaired from habitat assessment, it has to be done in conjunction with invertebrate data on that stream or water body. There is clarification that existed in the rule prior to, or at the time, it was originally proposed. The program has answered that question as to how habitat assessments play a role in the 303(d) listing that they cannot in itself be the reason for listing it. It has to be in conjunction with invertebrate data.

Mr. Schroeder discussed data from watersheds of similar geology and land use. What's happening there is that based on broader information about basins and watersheds, there's some conclusions that can be drawn about the quality of waters where there is no data. The department has made it clear in the rule that sort of extrapolation cannot lead to the listing under the 303(d) section. It must be only used in trying to assess waters in the state through a 305(b) report. That distinction has been made in the rule.

Mr. Schroeder reported on the review of the adjacent state's water quality information. That whole process is meant to bring consistency between states. In review of adjacent state's water quality data, the stream that may originate in Missouri and flow into another state may present data to us to cause us to believe that our water is impaired. The rule has opened that door for our ability to assess that.

Mr. Schroeder explained there has been a lot of questions about how much detail should be in the rule. The department has divided opinions in the comments that were received. Some believe that the listing methodology document in itself should go into the rule in a much greater degree, that some of those details should be picked from that document and actually written into the rule. Others believe that it is appropriate the way the rule is written that the methodology document should be a stand alone guidance so that it can be referenced and used in an appropriate manner using best professional judgment. Therefore it can be a flexible way for the state to adapt to do EPA guidelines and other new methodologies as they become available. The rulemaking process is a very arduous and lengthy process. If you put too much detail into it, it makes it very difficult for the department to adapt to new ideas and new ways of doing business.

Mr. Schroeder stated the department believes the way the rule is written, with respect to referencing the document, is the appropriate way to handle this matter.

Mr. Schroeder continued to report that two other areas the department has looked at, and based on comments, is the clarity of wording or meaning in the phraseology. The department has added some definition of terms to be able to satisfy some of those concerns. They have also rephrased or eliminated some vague terms in the rule. Another area of concern is how much public participation will there be in the 303(d) listing process. There are several opportunities for the public to get involved in the final 303(d) listing. First there is the methodology document. The department intends to place it out

on public notice and for review by the public on a regular basis. They intend to place that document out on public notice every time a 303(d) list process is opened. The 303(d) list itself by statute has to go through a rulemaking process. That is another opportunity for the public to have a comment on how they have chosen certain water bodies to be listed and for what reasons. There is also an administrative record that has to be kept on the whole process. That record is open to public review at any time. The department has also chosen to create a consistent format by which to do a 303(d) list. That will be explained in the listing methodology document.

Mr. Schroeder discussed the issue of should rule follow the development of guidance or should guidance follow the development of a rule? The department's feeling is the guidance should follow the development of a rule. In order to prepare appropriate guidance, you need to know first what legal bounds you are bound by. Again, the way the rule is written, it provides the department with the proper framework in order to develop a guidance document that everyone will be able to have comment on, and that will be able to get them to the point where they can make appropriate decisions on the listing under section 303(d).

Mr. Schroeder opened the discussion up for questions. He mentioned there was one minor error that was made in the department's response to comments. It's on page 50. It is an inappropriate reference. The response reads "Delisting is covered in Section (3)(B)…" It should read "Delisting is covered in Section (4)(A)…" The reason for that error is they were referencing a previous section before the revisions.

Mr. Schroeder offered to go through the actual rule changes unless the Commission had some questions to ask.

Chairman Herrmann responded he would like to entertain a couple of questions to Mr. Schroeder. He stated on page 53, the response to comment 17, it reads "The department's stated policy in the Listing Methodology document is never to use Level 1 data as the sole source of a 303(d) listing unless that data indicates beneficial use impairment with a high degree of certainty." On page 61, paragraph (C), it reads "Only data of Level 2 or higher shall be used to support additions, deletions, or changes to the proposed 303(d) list, unless the problem can be characterized by Level 1 data, for example when sample variances of key water quality constituents are low enough to offset the small sample size. These four (4) levels are: 1. Chemical data collected quarterly or less often for three (3) or fewer years, qualitative sampling of invertebrates or fish, or visual observations of streams." Chairman Herrmann commented there has been a considerable argument with EPA over use of Level 1 data, and in Chairman Herrmann's opinion, quarterly or less often for three or fewer years means a grab sample would be sufficient to be Level 1 data to open to interpretation. At the least, Chairman Herrmann thinks the Commission should strike the "or less often" or "fewer" from that phrase.

Philip Schroeder pointed out the attempt in the rule in defining these levels is to generally speak about what makes data more reliable.

Chairman Herrmann responded the terminology Mr. Schroeder used in the meeting was scientifically defensible. Certainly Level 1 data is not scientifically defensible. Particularly not on the basis it is described there.

Mr. Schroeder replied his only response to that is that they go back to EPA's guidance, which requires them to consider all data that exists. They do have to make the judgment that the data is scientifically defensible. Mr. Schroeder questioned if the Commission's desire was to define scientifically defensible by eliminating Level 1.

Chairman Herrmann said at the least it should say "Chemical data collected quarterly for three consecutive years."

Commissioner Greene explained there can be situations where you have a major thing happen to impair it and it happens and you catch it in one year. So, is that saying it's not any good? They have to wait three years before they can, when they know something's happening and something's wrong. That is what the department is saying with their response is that they can't use it by itself unless it indicates a beneficial use impairment with a high degree of certainty. So, anytime they throw out data, which shows there's a big problem, that's what the Level 1 is going to show, is only when there is a major problem, because if it's a relatively minor problem, you will have to get consistency over time.

Chairman Herrmann stated it's an unusual occurrence that happened at one particular time and is never going to happen for another 10 or 20 years, if it shows up three years in a row or three quarters in a row, then it's not an unusual circumstance.

Commissioner Greene replied that Chairman Herrmann just said three quarters instead of three years. That's a big difference.

Chairman Herrmann responded it says taken at least quarterly.

Commissioner Greene replied for three years. A lot of damage can be done in three years.

Chairman Herrmann responded we are only producing water quality beneficial uses on a tri-annual basis so it's going to be three years before your going to consider it again anyhow.

Commissioner Greene asked what if it's the year before the list comes up? And that's one year.

Chairman Herrmann replied if its happened for several quarters out of that one year.

Commissioner Greene said that is different than what you are saying. Because you are saying for three years.

Chairman Herrmann replied he is saying taken at least quarterly over three years.

Commissioner Greene replied right, which is not what you just said earlier.

Commissioner Kelly commented she would not like to see this whole thing struck. She thinks that she might be a little disturbed that it would only be one sample, but she thinks if it's quarterly for one year that should be enough to give some kind of judgment that something is very wrong. She wouldn't like to say you have to wait three years.

Commissioner Hauser agreed with Chairman Herrmann. It's really a philosophical issue and flexibility is great. Too much flexibility and you lose precision and consistency and you have the situation where you may not apply things the same to all parties. We are talking about the rule of law here. Once law becomes so ambiguous it's no longer the rule of law it becomes arbitrary depending on who's administering it. Commissioner Hauser thinks they have to have some consistency, some precision.

Commissioner Greene asked how about saying collected quarterly for at least one year?

Commissioner Hauser replied flexibility is great but if you include too much in a document that's outside the law that's controlled by bureaucratic processes, we've lost the exactness in the law that we need and the stakeholders and the citizens have a right to be regulated. By not having a chance to review the methodology list, it's pretty difficult to make a call on this in general.

Commissioner Minton stated before they go through and start debating the issues individually, he wants to ask a much more broader and general question concerning the document itself. He thinks there is a significant difference between this proposed rule as revised from the initial rule they considered at the December meeting. What are the ramifications, because there is such significant changes, by extending the public comment period to let the public have additional time to go through and comment on the comments. This is pretty radically different from what they started out with a month ago. He would rather err on the side of caution to address all the concerns. The public comment is over with. There is a lot that has taken place and a lot of modifications that have been made in the revised document. Commissioner Minton sees, as Chairman Herrmann pointed out, significant references to the listing methodology document, which in his opinion the rule and document are obviously hand and glove. He wants to make certain that they are not trying to put a right handed glove on a left hand. He thinks no matter what side of the issue, the isle that you stand on, there would have to be a legitimate concern in the methodology document then going to answer all the questions since this is the first time he's seen it. And he hasn't even seen it. He's been told it's in the blue folder, and that is how they are going to proceed. Commissioner Minton said he

is clueless as how they are going to proceed. This is a rule that is of significant importance. He does not want to make a mistake on either side of the issue of either voting it up or voting it down. So before they have all the individual discussions of individual items, where are they at and the opportunity to open it up to additional public comment. Can they do that? If they do that what happens?

Amy Randles, Assistant Attorney General, explained you have a time deadline after the close of the public comment period to get the rule published with the Secretary of State's Office as the final rule. Tied with that is a date for the final rule to go to the Joint Committee on Administrative Rules (JCAR). She can't recall if it goes simultaneously there or if it's 30 days in advance. Ms. Randles asked Aimee Davenport, division general counsel. Ms. Davenport replied it is 30 days in advance. Ms. Randles stated the public comment period ended February 11. If you are going to deal with this in this rulemaking cycle, you now have to get it done by 60 days after February 11.

Commissioner Minton asked if it wasn't 90 days?

Amy Randles replied yes, but it has to go to JCAR 30 days before that. You just have 60 days now to do something. She is not sure whether you can open up the comment period after it has already closed. She thinks while it was still pending you could have perhaps extended it, she is not sure about that. She is not sure they can open it up again now. She will look and see if there is room to do that. You at least have until basically another month in which to delay your action; it can be a conference call or whatever if you want more time to consider it. She can sit there and look at what the statute says and remind herself about whether they have a chance to reopen the public comment period at this point. This is the time frame by which you are acting. If you don't take action by that time, you are starting from scratch.

Commissioner Minton asked Ms. Randles if she was going to answer the question, if there is any opportunity for some way that without going through and republishing the proposed rule, which would delay the whole process by five or six months again before the Commission can considered it again, if they have the opportunity before them as public comment is officially posted once, if they can open that back up again.

Ms. Randles replied yes, she is going to look right now.

Commissioner Minton said he understood, and that will have significant bearing on his thoughts for the morning.

Commissioner Perry asked if they wanted to continue discussing Level 1, and she thinks they have shown that is an area of concern and she is not sure if they have a resolution, and she's not sure they are going to get one. She would like to know specifically how many hours of training a volunteer would have to reach Level 2 and how are they supervised as to the quality of their data.

Phil Schroeder said he would have to turn to other staff to answer that question.

John Ford, Chief of the Monitoring and Assessment Unit, said he believes the way the program is set up now they have to attend an introductory workshop and then pass through a Level 1 workshop. To become a Level 2 they actually have to attend a workshop where they are given a laboratory practical where they have to prove in a laboratory that they can get accurate results from their chemical test kits they have. They have to identify a certain percentage (75%) of the invertebrate animals that are commonly found in streams that are on that worksheet. Once they prove that they can do that, they are Level 2 and the department accepts their data.

Commissioner Perry asked if they come back at any time to be rechecked? Is it a one time workshop?

Mr. Ford replied he thinks at present it is a one time workshop.

Commissioner Minton asked if that is described in the listing methodology development document or where are those standards at?

Mr. Ford replied there is a quality assurance project plan for the whole volunteer Water Quality Monitoring Program.

Commissioner Minton asked Mr. Ford if that is referenced anywhere in the listing methodology document?

Mr. Ford replied he did not believe so.

Commissioner Perry doesn't think the other things are defined, Level 1 just says observations. She took the Level 1 training and she would hate for anyone to depend on her assessment based upon that training. If she had went one more day, she is not sure she would be to a level that she would want anyone to depend on that either. With no confirmation by anyone who is well trained, she would feel very inept at submitting that sort of data.

John Ford commented at the Level 2 workshop, the person has to prove to the trainers at DNR that they are capable of running the test kits accurately and that they are capable of getting the invertebrate identifications correct. If they can't do that, they don't get Level 2 status.

Commissioner Perry stated it's three days of training total plus the QAQC test and then also you can't go to those higher level trainings unless you have been monitoring a stream for a while. Very few people that get the intro and the Level 1 go on. The numbers go down dramatically after the first training. They are not talking about a tremendous number of people who have Level 2 or 3 training. There is another level above the Level 2.

Commissioner Hauser asked Mr. Ford if he had any idea how many people fail the attempt to get to Level 2?

Mr. Ford replied no he doesn't.

Commissioner Kelly reported as a member of Stream Team she doesn't have Level 1. The other members of the team do. If you take the training and if you pay attention and continue working, the rules for doing the chemical part are pretty plain and clear if you are a careful observer.

Commissioner Perry commented how you dip the screen in the water effects what you have to count. There is a tremendous difficulty in identifying the very small invertebrate especially if someone's not doing it very consistently with a lot of experience and some occasional supervision. She is worried about the implications of putting a stream on a list based on three days of training.

Commissioner Greene commented that she thinks the people in charge of this program are very good about looking at the data. They examine every piece of data that comes in and if there is anything out of line, they question it.

Commissioner Perry stated she doesn't have a problem of Stream Team data being used to support other observations and other tests. Her concern is they are now saying Level 2 data can be used independently for determination on whether or not to place a stream on a list.

Chairman Herrmann gave an example about his opening concern about the number of tests taken. A few years ago they went to the poultry producing area in southwest Missouri. They had the Stream Team for that area with them. They took some samples from the little stream of concern in the area. They said there are no nutrients in this stream. Chairman Herrmann asked them what was the last period of rainfall. They said about three weeks ago. Chairman Herrmann asked them if they had any runoff in recent times. They said no they haven't. Chairman Herrmann asked them if their test was representative of this stream at all periods of the year. They replied, no it isn't. So, it depends on when you take it, how you take it and what the results are if you can produce a scientifically defensible position of impairment.

Commissioner Kelly ask Mr. Herrmann if you don't have to put that down on the report then when the last rainfall was and DNR can read that?

Chairman Herrmann replied no. He went back to the statement he made sometime ago when he did some work for Ft. Bragg, North Carolina. They had to require NPDES permits on the vehicle wash racks on that post. They went out to a contract to a laboratory. Chairman Herrmann reviewed their last three years of laboratory results for NPDES permits and every one of them were taken on Tuesday, Wednesday, or Thursday

of a particular week. They indicated zero flow. Obviously, reserve units meet on weekends. So you are bound to have no flow other days of the week. Does that mean it's acceptable on Saturday and Sunday?

Commissioner Greene stated if you want an accurate representation you had better be out there every day. That is not going to happen.

Chairman Herrmann asked if it is scientifically defensible to have one test? Not in his opinion.

Commissioner Greene replied you are right. There is going to be times when one sample is going to show something major. If it's slightly elevated, no.

Commissioner Perry asked if there is someone on staff who is constantly monitoring and checking these results around the state. What sort of staff dedication do we have to scientifically test these streams from in-house? Who actually is taking data and analyzing data?

John Ford replied yes, there are a lot of people who do that.

Commissioner Perry gave an example of the streams that are already on the 303(d) list. Does the department have someone in-house going out to those waters and monitoring them?

Mr. Ford replied some of them, yes.

Commissioner Perry asked how many people and how often is that done?

Mr. Ford answered he would have to give Commissioner Perry a report. The department's monitoring program is rather complex. They try and track not only 303(d) waters, but other impaired waters they try and anticipate changes and trends in water quality. They also monitor some of the better waters in the state to do trend monitoring on them so they do monitoring for a lot of things.

Commissioner Perry said she is looking for ballpark figures. What amount of staff is dedicated to doing that? That would help her understand what kind of frequency is going on from a department level. That would help her understand they are getting on the other sources. How many people on staff are totally dedicated to the monitoring of the waters?

Mr. Ford asked 303 waters or all waters in the state?

Commissioner replied all waters.

Mr. Ford stated there are seven or eight people in the laboratory that do a combination of chemical and biological testing. There are six or seven chemists.

Commissioner Perry asked how many people are dedicated to the sampling?

Mr. Ford answered there are seven or eight people in the laboratory, eight to a dozen of people in the regional offices. Part of their job is sample collecting. There are three or four people in the Water Quality Monitoring and Assessment Section that part of their job is to do sample collecting in streams.

Jim Hull stated there are a lot of streams and water segments in the state to watch over and determine whether they are impaired or not or if they are improving in quality. If the department doesn't have a little help doing that, it's going to be years and years before they get around to all of them to determine the quality of water in those streams. There is some concern that waters are placed on that list, but with very little data that they have been able to scientifically document. The suggestion of Level 1 data collected quarterly for one year is a good safe middle ground. On the discussion of the level of training, how many samples over what period of time, the department needs some help out there but again the suggestion of quarterly for a year sounds reasonable.

Chairman Herrmann voiced that his concern is that it's a bit more defensible if it's taken at least quarterly over a period of time rather than a particular grab sample that may have been after an unusual runoff or some other unusual occurrence.

Mr. Hull stated that another general observation is if the department has information that was supplied to them based upon violations from Level 1 data, they wouldn't take enforcement action without additional sampling to determine whether or not it's correct. Kevin Mohammadi, Chief of the Compliance and Enforcement Section replied that is correct. Mr. Hull was trying to get a little consistency from the enforcement side versus placing a water body on the 303(d) list.

Mr. Ford explained why they wrote the Level 1 definition the way they did. If the department receives just one piece of data that it thinks is scientifically defensible, they need a category to put that in. With one piece of data, they are not going to use that to make a judgment on impairment. They still have to have a category somewhere, which says this amount of data falls within a certain category. Category 1 is basically from one piece of data on up to the amount that is described as quarterly for three years, which would be about 12 pieces of data. Essentially, that is what Category 1 is. Then they make a qualifier that data in this category could be used if it's scientifically defensible. By that, some statistical tests would be applied to make sure it is statistically significant.

Chairman Herrmann stated the way the rule is written, that is not what it says. You are saying a number of samples. The way it is written it says "…collected quarterly or less often for three or fewer years." So a grab sample may fall into this category. If they strike that ambiguity out of it, then maybe they can get down to something that is scientifically defensible that is based on a group sampling and not a sample.

Mr. Ford stated he thinks what Chairman Herrmann is saying is stipulating that the department has 12 or more samples before they do something. That is where Level 2 starts. But if someone sends them one sample, they have to have a category to put it in.

Chairman Herrmann commented Level 2 is at least three years. Level 1 is saying for three years or fewer. So you might have a grab sample. On page 53 as he read, the department is saying it's the department's policy never to use Level 1 data as a sole source.

Mr. Ford explained the department may have five or six pieces of data. They all say basically the same thing. They apply a statistical test, compare that to say a numeric water quality standard, and they find with a very high degree of certainty that those five observations deviate significantly from the standard, then they would use that.

Chairman Herrmann said that is fine, you have several sets of data. That is not what the definition of Level 1 says. It says "…collected quarterly or less often for three (3) or fewer years…"

Phil Schroeder stated that maybe misunderstanding each other on this issue is that the Level 1 through 4 data categorization is meant to describe data for both the use of the 305(b) reporting process as well as the 303(d) listing process. Mr. Schroeder understands what Chairman Herrmann is trying to do is define it where definitively for just the 303(d) listing process.

Chairman Herrmann said even on the 305(b) you shouldn't list something on a particular sample. It should be scientifically defensible to go on the 305(b).

Mr. Schroeder stated it wouldn't be listed in category 5 of the 305(b) report where it talks about impairment, but it may be one of the other categories where it's a little less conclusive.

Commissioner Hauser asked if Level 1 data is scientifically defensible, would they not use it for enforcement action? The fact that they don't implies that it is not scientifically defensible.

John Ford stated the distinction they are trying to make there is not all Level 1 data may be scientifically defensible. You may have a particular data set that meets the qualifications of Level 1, less than 12 observations. It might be that just because of the nature of that data, it's statistically significant and probably should be used to make an impairment decision. A lot of data in that category would not have that characteristic in it.

Commissioner Hauser replied if that were the case you would be using some Level 1 data for enforcement actions. As he understands it they are using none.

Jim Hull reported they require additional samples to back up Level 1.

Commissioner Kelly stated if that could be said, that DNR's going to go in and get more samples, that would make more sense.

Kevin Mohammadi explained these are really two exclusive issues. How to treat the Level 1 sampling and enforcement action. They do not take enforcement action based on one sample. As they prepare to litigate to enforce the law, they need to show, over a period of time, that the discharge has had adverse impact on the stream.

Commissioner Hauser said he agrees with that philosophy and thinks it should also be applied in this document.

Commissioner Greene stated first of all they have to have a place to put all the data that comes in to report. They have got to have a level where data fits that doesn't meet the criteria for use most of the time.

Chairman Herrmann referred back to page 61, paragraph (C) where it talks about where the department will recognize four levels of assurance for water quality data to list on a proposed 303(d) list. They are defining what is acceptable for evaluation to the 303(d) list. What does staff have against striking the "less often" from the quarterly bit even if you change three years to one year?

Phil Schroeder replied the only concern they may have is the fact that you have taken out a certain group of data that is useful in making determinations on the condition of a water body. Not for using toward determining an impairment issue, but in describing the condition of the water.

Chairman Herrmann replied the heading of the paragraph says that's what your going to use for making the proposed 303(d) list. If your going to describe it as one of the four levels that are used then your describing what is going to be used to put it on there.

Commissioner Greene stated there has to be a place to put data into a level. That is part of it. The second issue is in paragraph (C). It says "Only data of Level 2 or higher shall be used to support additions, deletions, or changes to the proposed 303(d) list…" Would it hurt to also put in there that Level 1 data can be used to put it on the 305? That would help clarify that these levels are also for the 305 list not just the 303. By adding one little statement about the 305 in paragraph (C) might clarify that Level 1 may be used for 305 and only under rare circumstances would it be used for the 303.

Chairman Herrmann asked what is the definition of the 305(b) list?

Mr. Schroeder replied it is a report that is due to EPA every other year that describes the conditions of all waters in the state. Not just impaired but all waters.

Chairman Herrmann said 20-7.050 methodology for development of impaired waters list. The 303(d) list is the impaired waters list not the 305(b). 305(b) are those waters, which are suspected of impairment.

Mr. Schroeder said exactly. What the department tried to do but perhaps failed in this rulemaking is that the 305(b) process is sort of the initial step toward defining impairment. It's not obviously a final step, it's just the first step.

Chairman Herrmann commented if you remember our argument with EPA on the 2002 list that was the argument that was presented in several cases is do those waters belong on the 305(b) list not the 303(d) list? That's what you are describing here, the methodology for the impaired waters list, which is a 303(d) list. You should not use Level 1 data. What does staff have against striking the "or less often" from the quarterly statement?

Mr. Schroeder replied the only thing is that it does eliminate some data that the department believes can be, possibly not very often, but could be scientifically defensible in making a listing under 303(d). That's all. Certainly the department would respect the Commission's decision on this matter if they wish to change the rules of that. There may be a possibility, although it may be remote, that Level 1 data of less than the bar that you are trying to establish, could be viewed by EPA as scientifically defensible and used by them to put it on the 303(d) list after the department has made their recommendation.

Chairman Herrmann commented then they would end up with another argument like they had in 2002.

Mr. Schroeder said the department is trying to bring as much consistency between their guidelines and the departments.

Chairman Herrmann responded he didn't think you are bringing consistency by saying "quarterly or less often."

Mr. Schroeder said that is leaving the door open for all data and he understands the concern that creates.

Chairman Herrmann stated to Amy Randles, if it's appropriate, he moves to change paragraph (C) 1, on page 61 to read "Level 1: defined as chemical data collected quarterly for at least one year."

Ms. Randles replied under Roberts Rules of Order, what you do next is if anyone seconds the motion then you can discuss it.

Commissioner Hauser seconded the motion. Chairman Herrmann asked if there was any discussion.

Commissioner Perry stated she thinks there is still a need for a catch all. A place to keep data. However, she wonders if the point isn't that you don't want to base a decision on data at a lower level. She asked if she is understanding this right?

Chairman Herrmann replied that is right. If you are collecting data, it goes in the cabinet with the 305(b) information. If you're making a decision for putting it on the 303(d) list, then it has to be higher than a grab sample, which is defined by the definition.

Commissioner Perry asked what about the rest of it? A visual observation of streams, would that have to be more?

Chairman Herrmann said they will get to that later. We are dealing with one specific paragraph right now. He asked if there was any other discussion.

Amy Randles stated because there currently isn't a motion pending to adopt the whole rule and go forward with final rulemaking on it, you may want to wait until you have discussed everything, all the issues, and call all the motions at once. You can withdraw this as a formal motion and just wait until you get to the point of moving to adopt rules with whatever changes you've discussed and then clarify at the point what changes you've discussed.

Chairman Herrmann replied he is looking to expedite this as much as possible. Taking it item by item will expedite it. If there is no further discussion, Marlene, please call for the vote.

Upon calling the vote, Commissioner Greene made a comment that she says yes at the "quarterly for a year," but she says no because she thinks they need a level to put all data in.

Commissioner Minton commented they are not excluding the Level 1 data to be utilized as the listing for 305(b). They are just discussing the listing for 303(b) impairment sites.

Commissioner Greene said they still have to have a place to stash the data.

Commissioner Minton said it will be stashed on the 305(b) list.

Phil Schroeder stated that all data received will be used to some extent in compiling the 305(b) report. It's somehow categorized in that report. Whether or not you add additional language or not to this specific section of the rule, he doesn't know if it precludes this from continuing on with doing that with the 305(b) report. This paragraph reads as though its trying to set the guidelines for developing and restrictions for use of data in developing the 303(d) list.

All Commissioners and Chairman Herrmann votes yes.

Ms. Randles stated there isn't any express authority in Chapter 536 or Chapter 644 that gives you the right to reopen your public comment period. A person could read in that you have the implied authority to do that. But you may not want to rely upon that and possibly infect the rulemaking process with something that derails it. One could read the law to mean that once you do your notice of proposed rulemaking and you set your public comment period and your hearing date your stuck with that. That is as close and answer that she can give. She does understand that the Secretary of State takes the position that you cannot reopen the public comment period after it's closed. That's just the Secretary of State's position. She commented that is the formal public comment period. The purpose of that is to let everyone who's interested know that they have the right to come and tell you what they think. You still have to make the decision about what you do, whether you go forward with the final rulemaking or not. You can discuss that amongst yourselves. You can seek input from whomever you want individually or as an entire Commission. If you're going to go forward with this rulemaking, you need to do it by April 11, which is the 60th day after February 11. She doesn't think there is anything that prevents individual Commissioners or the Commission as a whole to ask someone in the audience just as you have been asking DNR to provide information that you find useful in deciding whether to go forth with the rulemaking. If you're going to keep changing what language is before you, you just need to keep in mind that the changes do need to be based upon the comments that were made during the public comment period.

Commissioner Minton made a motion to reject the listing methodology document, that they reestablish and open it back up, public notice it again, and work that document simultaneously with the stakeholders meetings to be associated with the development and the implementation list of methodology document. Commissioner Hauser seconded the motion.

Commissioner Minton recommended before they go and spend a lot more time going through the intricacies of each one of the items, he believes this issue, while it's important, while the Commission gave staff the direction to develop a methodology for the development of the 303(d) list, he thinks that they will obviously not be able to have this document in place in time to develop the 303(d) list rule itself, but he would rather do it right rather than make a lot of mistakes that have to come back and be corrected. Commissioner Minton doesn't think you can do the public at large justice. He doesn't think as a Commissioner he can do the public at large justice with worrying about the comment, who came first the chicken or the egg? He uses the analysis of hand in glove. Because he has no working knowledge of what the methodology document was, contained or how it impacts the rule, or how the rule impacts this document, he cannot without a great deal of deliberation and flipping a coin in the air ultimately, how to vote on this issue. He is not comfortable with the way they are doing it, he's not comfortable with the rule as it has been given to the Commission, and he certainly is not comfortable with the fact that there have been so many changes and modifications to it that the public sitting out there have had no opportunity to respond to the staff's responses. There are too many references in there to the listing methodology document for him to feel comfortable that they are in fact workable. That they are not a right hand on a left hand.

Maybe if he had this document two weeks ago, he'd feel more comfortable with where he is at, but he has not had the time to listen to the discussion and read it at the same time. What would happen theoretically then from his motion and the success of his motion would be they would have the rulemaking document renoticed, they will be carrying forth with the listing document, which will be ultimately from the way he perceives it, the instrument that actually drives the development of the 303(d) list anyway. The rule is just a formality. The could have had a one liner that says the rule is going to consist of those issues that they have agreed upon on the listing documents. They can proceed on with those two issues and that will not impede on the development of the 303(d) listing rule.

Commissioner Greene stated they are putting it off for a year basically.

Commissioner Minton said it will be put off for a year. But he would rather put it off a year rather than to support something or reject something that he simply cannot do with good intelligence. He has done his homework and is more convinced that his position of not knowing what to do, he is going to err on the side of caution. He will not support this rule as it is presented to the Commission today because he doesn't have the information to back it.

Chairman Herrmann stated there is a motion and a second. Is there anymore discussion?

Commissioner Perry stated she supports Commissioner Minton's motion because she doesn't think the document they were handed today ties in with the rule as closely as it should. She wonders if they shouldn't both be publicly noticed. She just opened it up to one page, the page talking about the levels of testing. They just had a discussion that Level 2 testing is when a volunteer can reach a certain level and recognize Level 2 data. When she opened up the document to one page it says exactly the opposite. She is wondering how much the department has picked it apart to have some coordination between the two. Therefore, she wants to give everyone the time to go back and do that. They have already discovered the consequences of ruling quickly and not taking everything into account. We should learn by our mistakes.

Commissioner Greene asked how does it say the opposite?

Commissioner Perry read that it says "Volunteers that have successfully demonstrated adequate quality assurance, assurance Level 2 or higher is Level 1 data."

John Ford explained those are two different rankings. The volunteers have their own scale of Level 1, 2, and 3. Those are data quality codes, which are a different scale.

Commissioner Perry asked is that Level 2 that they reach scientifically defensible?

Mr. Ford responded if a volunteer is Level 2 or higher on the volunteer scale, that makes them Level 1 data until they get to the point where they have collected large enough amount of chemical data that it gets them to Level 2 on the data quality.

Commissioner Perry commented if she gets that confused she wonders how many people reading the rule will get it confused. She thinks they need to clean it up.

Commissioner Greene said she is not sure she agrees. She thinks that the rule is designed to be general so they can get the specifics and change easier with the methodology. The methodology document will be public noticed. It is not something that they are just going to put together. So it is going to go through a public notice process. She is not sure that the changes were that significantly different other than really referencing the methodology. She thinks that they put everything way behind for a general document and for the specific part they're going to put a public notice anyway. She is not sure it's worth voting it down now because they're going to public notice the methodology document anyway.

Chairman Herrmann said he is with Commissioner Minton. He's not sure how many contradictions they will find when they finally go through the methodology document.

Commissioner Greene replied because it hasn't been public noticed yet.

Chairman Herrmann said that is correct. He is with Commissioner Minton.

Chairman Minton said since Ms. Randles told him he could ask the audience, he asked them how many of them actually came to the meeting to hear the discussion of the methodology document, the rule. He asked those people that were there to hear the discussion if they realized that in the comments that were made by the department and the responses, would they liked to have had an opportunity to comment on those responses too that the department gave. He also asked them how many people were content with the responses that the department gave and would support the rule as proposed to the Commission.

Commissioner Green said to Commissioner Minton that she thinks he will get those kind of responses with every rule they ever have. She thinks another alternative would be to let them get other comments and put off the vote for a month. Let's not make a decision today when they can have a draft methodology document that they can look at. Let's put it off, read the methodology document, they can find all those things that conflict even though it's going to be public notice anyway. Make a decision within the next month.

Commissioner Minton replied that Ms. Randles has told him they can't ask the public anymore.

Commissioner Greene said Ms. Randles said they could ask anyone they wanted to.

Amy Randles said she doesn't believe the end of the public comment period is intended to signify that as Commissioners they cannot discuss this with anyone except themselves. You have sat here today and you've been asking staff questions, you've polled the audience, it's not limited to who's in this room. You can go back and call people who you think may have opinions about it. Ultimately at the end of the day, if you do go forward with the final rulemaking, and if it has changes from what was originally proposed at the time of the notice of proposed rulemaking, the changes need to be reflective of the comments that were made during the public comment period. They need to not be out of nowhere. The purpose of the public comment period is that people that are interested in the rule get to see what it says, they get to comment, they know that other people are commenting, they have a right to review the comments that were made. While you may feel you need to talk to someone about reaching your own decisions about whether to go forward or not, you do need to realize the purpose of the public comment period was it's an open process. When you come back and vote you do that in an open session. The changes that you make need to be fair in terms of whether or not the public got notice. That is usually the way the courts are going to look at it. It's not like a contested case hearing where your not supposed to have an exparte contact with the parties to the case before you. It is a rulemaking. You can have contact with people, it's just that you need to be careful about the changes that are made in the final version of the rule if you do go ahead and adopt it.

Commissioner Minton stated this all has to be done on or before April 11.

Jim Hull asked for a clarification. April 11, is that the day it has to be filed to the Administrative Hearing Commission?

Ms. Randles replied that is the day it has to be filed with the Joint Committee on Administrative Rules and you would not want to send a different version to them than you end up sending to the Secretary of State. You have 60 days after the close of the comment period, which was February 11, so that makes it April 11. You need to be done at least a week before that so that it's ready to send in case you make changes.

Commissioner Minton says that takes them back to April 1.

Phil Schroeder said the 90 day deadline he mentioned earlier is when the order or rulemaking needs to be filed with the Secretary of State's Office. It's 90 days after the public comment period ends.

Ms. Randles stated May 11 is when it has to go to Secretary of State.

Mr. Hull added a comment on what Commissioner Greene said. Instead of taking action today to reject the proposed order of rulemaking, take the methodology document that was provided to the final proposed rule, the knowledge of the discussion today, and maybe delay the vote on it until a conference call can be set up closer to April 1 to take that vote.

Commissioner Kelly said she thinks they do need more time. She can't see the point of having another public hearing. She thinks people have had an opportunity to do that and she wonders if they can tell them anything different other than they still think what they said before. She thinks that is opening up endlessly how many times do we comment on responses and then comment again on those responses. She can't see that.

Chairman Herrmann said for a document as important as this is and the implications that it has to the public, he thinks the Commission has the responsibility to give it their best judgment and allow input to the greatest extent that they can get. Knowledgeable input. Please call for the vote Marlene.

Commissioner's Hauser, Minton, Perry, Easley, and Chairman Herrmann votes yes. Commissioners Kelly and Greene voted no.

Mr. Schroeder understands the votes have been made and he understands the department's path. Just so everyone is informed about potential consequences down the road, if they fail to adopt a rule and get the process completed it ends up actually furthering the time which they can propose a 303(d) list to EPA. They have the right to develop their own list and submit that to the state. The department's deadline is next month to make a proposal to EPA just so that you understand that.

Chairman Herrmann stated the 2000 list was due in 2000, it was finally promulgated by the Commission in late 2002. It was finally excepted by EPA in late 2003 with revision. So we are three years behind the curve on the last one.

Commissioner Minton asked Mr. Schroeder to repeat what he said.

Mr. Schroeder stated the department is on a regular schedule to provide to EPA a recommendation of which waters should be listed as impaired. His understanding is that the deadline comes next month for the next proposal to EPA.

Commissioner Minton asked what proposal?

Mr. Schroeder replied it's what water bodies in the state of Missouri that the department believes is impaired. It would be a proposed (303(d) list.

Mr. Ford reported the 303(d) list is required next month for 2004.

Mr. Hull wanted to clarify what was being said. The next 303(d) list is due in 2004. The department is not going to be able to get it done. We have already admitted that. EPA is aware of that. EPA also knows that the department is proceeding as the Commission directed in placing the methodology in rule first then doing the list later by rule. We have proposed a timeline to EPA in which we were going to accomplish this. What

Mr. Schroeder is saying is any delay in the methodology rule will delay the 303(d) list rule. EPA may have to react to pressure to do the 303(d) list on their own.

Chairman Herrmann offers one correction to Mr. Schroeder. The 303(d) list as finally submitted is not the recommendation of the department it's a recommendation of the Commission.

Commissioner Minton commented to Mr. Schroeder he always likes to know as much as he can conceivably know about an issue before he votes. It would not have changed his vote, but he certainly would liked to have known the department's comments prior to today. He likes to know what he's up against before he walks into a room. It's hard as a Commissioner to come every other month and retain all those bits and pieces of fragments of information. He probably should have known what was just described; he should have remembered that. He is sorry but he didn't. You will immediately start public noticing this comment because that was the intent. You will do it simultaneously he hopes if there's anyone that will visit with EPA and that they will stress that the department is still on a course of action to do it and do it right and do it in a timely fashion. But let him know up front. Once again, you've already commented and he appreciates the comments. This document, the Commission should have had earlier, this document they should have had in their hands a long time ago.

Commissioner Perry stated she thinks what they are addressing is a problem of process. She was just thinking of the rules that she can imagine this committee has passed, and passed very successfully, the Hydrostatic Water Testing Rule and the Brownfield Rule. In each of those cases the process was a little different. It wasn't the department writing something, handing it to the Commission the day of with the comments. She proposes that they get together. The Commission has some strong feelings about this rule. She is not suggesting they throw it back in the department's laps and say write a rule, bring it to the Commission and we'll tell you what's wrong with it, but she would rather see everyone work together to develop the rule before it ever goes out even for public comment. Something that everyone will feel pretty comfortable with. She doesn't think this is brain surgery. They are talking about some basic scientific safeguards so that they can call something scientifically defensible. They all have some strong feelings about that. She thinks they need to get everyone's input and she is perfect willing to have more frequent Commission meetings to get together for that dedicated purpose and whoever is interested can come too. Something rather informal but an open meeting to strictly discuss this rule so they aren't wasting so much time and ending up in situations where they are handed data the day of the meeting that they haven't seen before because if they were all together then it wouldn't be a problem. She would like to also mention that they have a Commission meeting dedicated to that purpose.

Request for Funding From the Metropolitan St. Louis Sewer District

Ms. Ann Crawford, Acting Director of the Financial Assistance Center reported she has been working with the Metropolitan St. Louis Sewer District (MSD) and funding their

projects for a long time. They passed a $500 million bond issue in February 2004. This is a landmark occasion for them. It's going to be a wonderful thing for the citizens of St. Louis as well as the state of Missouri. They had been discussing whether or not their bond issue would pass for quite some time with the district. Since the bond issue did pass, they are coming to DNR now wanting to run some of the bond proceeds through the state revolving fund. They have already financed a $69 million direct loan, not a leveraged loan. The Commissioners may remember that from previous meetings that those projects were on the fundable list. The department had hoped that they would be able to take that out with a leverage bond. Passing this bond issue will enable them to do that. The district has indicated to DNR that they would like to include more project than what they had in the $69 million after it's leveraged. The department thinks that would be a wonderful thing. The district came to the department and asked them if they would finance up to $200 million using these bonds that they passed. The department is still trying to refine and define exactly what projects that would undertake. They told the district it would need to be projects, which are already in process, that they have already reviewed or at least have substantial documentation for, and have already got the environmental clearances. That includes anything on the Meramec Treatment Plant that meets that criteria and was covered under the Environmental Impact Statement. So that they have all of their environmental clearances, they have their project defined pretty well as the Meramec Treatment Plant and anything they encompass.

Ms. Crawford referred to the Commissioner's blue folder. She had placed a little part of the IUP in there. This will show the Commissioners what the department has already done and what projects they hope to put on the fundable list. The ones that are highlighted in green are the ones that are covered by the $69 million direct loan. The $69 million wasn't sufficient to cover all the construction. The items highlighted in orange are the Voluntary Contingencies. The district, at the time when the Intended Use Plan was developed, admitted that they would not be able to proceed with that much of the project at the time. They voluntarily put these projects on the contingency list.

The department is asking, all of the Meramec Treatment Plant, and all of the contracts related to the Meramec Treatment Plant, whether constructed already or under construction, all of which they have reviewed, to be placed on the fundable list. The district realized that there isn't near enough money to finance all of it. They came to the department with $200 million and they're willing to work with the department in leveraging at only 50 percent instead of the 70 percent that the department traditionally gives other communities. The district is doing some value engineering and hoping to cut some costs by doing that value engineering. The department is also asking the Commission to give them the flexibility to adjust the project's scope and the leverage ratio to such that they can achieve their goal and not spend more money than they have. The department is asking for a 50 percent leverage ratio up to the 70 percent. They may come somewhere in between in order to accomplish the construction loan that they have set. The money is there. There was $17,900,831 left over from the last Intended Use Plan. They would use all of it, less the $500,000 the department already gave to someone else. The department had some projects that came in under budget that were above MSD

that they have already funded. That money will be used. The original $69 million, which they will leverage to make for more construction dollars. Ms. Crawford is asking the Commission to place the Meramec Treatment Plant Facilities on the fundable list.

Chairman Herrmann asked if there was any input from MSD. Ms. Crawford stated Carlton Tyminski from the district was there. Mr. Tyminski wished to thank everyone involved for their help over the years and briefly spoke of their projects. Chairman Herrmann entertained a motion to accept staff recommendations

Commissioner Easley made a motion to accept staff's recommendation to place the Meramec Treatment Plant Facilities on the fundable list. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Commissioner Hauser moved that the Clean Water Commission go into Closed Session to discuss legal, confidential, or privileged matters under Section 610.021 (1), RSMo; personnel actions under Section 610.021 (3), RSMo; personnel records or applications under Section 610.021 (13), RSMo or records under Section 610.021 (14), RSMo which are otherwise protected from disclosure by law. Commissioner Easley seconded the motion and all Commissioners and Chairman Herrmann voted yes.

Commissioner Minton moved for the Clean Water Commission to come out of closed session and go back into open session. Commissioner Greene seconded the motion and all Commissioners and Chairman Herrmann voted yes.

<u>Lake of the Woods Mobile Home Park Enforcement Referral</u>
Mr. Kevin Mohammadi, Chief of the Compliance and Enforcement Section reported Lake of the Woods Mobile Home Park is a trailer park, which consists of approximately 20 mobile homes in Boone County, Missouri. The wastewater collection and treatment system serving the Park consists of a single cell lagoon with a design flow of 5,000 gallons per day. The nearest receiving stream is the Hominy Branch and is part of the Perche Creek and Little Boone Femme Basin. On August 11, 1989, a Missouri State Operating Permit (MSOP) was issued for the operation of the lagoon. The MSOP was reissued on August 10, 1994, and expired on August 10, 1999. To date, an application for renewal has not been received.

From June 19, 1992 to February 7, 2001, department staff conducted six (6) inspections of the lagoon and observed the following: brush and trees were growing on the berms; sludge deposits were prominent in the lagoon; duckweed covered the entire water surface; the lagoon was septic due to lack of oxygen and sunlight; the stand pipe on the effluent structure was cracked and needed replacement; berms were very narrow and steep with only three (3) to four (4) inches of freeboard; sewage was backing up and overflowing at the mobile home located nearest the lagoon; wastewater was overtopping the berms due to a drainage pipe being blocked at the discharge end, and annual operation and maintenance reports were not submitted.

Since February 7, 2001, department staff conducted three (3) inspections of the lagoon and observed violations consistent with prior inspections. Negative impacts to the receiving stream were observed. The department issued three (3) Notices of Violations dated October 29, 2001, February 28, 2001, and March 18, 2003, for operating a water contaminant source without a permit, failure to apply for renewal of a MSOP, and causing pollution of waters of the state.

In November of 2002, the property was purchased by Mr. George James. It was the department's intention to work with the current owner to attain compliance. Although the department has not received an application for a MSOP, permit fees have been paid. To resolve the violations, the department mailed a letter to the owner on June 9, 2003 offering to resolve this matter through a negotiated settlement agreement. In response, the owner contacted the department stating that improvements have been made to the lagoon since his ownership, and requested department staff to visit the facility. On June 25, 2003, a site visit was conducted, and department staff observed that some trees and brush were removed from the berms, however, the lagoon remained in inoperable condition as observed during prior inspections. In a letter from the City of Columbia dated July 31, 2003, the owner was notified that the City's wastewater collection system is available for connection to the Park. On August 13, 2003, the department mailed the owner a letter requesting that he submit an engineering report by September 30, 2003, describing the connection of the Park's wastewater collection system to the City of Columbia's wastewater collection system, and that such connection be completed by November 25, 2003. To date, an engineering report has not been received and the connection has not taken place. It appears that further efforts to resolve violations of Missouri Clean Water Law occurring at the Park would be futile. It is recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

Chairman Herrmann asked if there was anyone present representing Lake of the Woods Mobile Home Park. Hearing none, Chairman Herrmann entertained a motion relative to the referral recommendation of staff.

Commissioner Minton made a motion to accept staff's recommendation. Commissioner Perry seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Tebo Creek Lodge Enforcement Referral

Mr. Mohammadi reported Tebo Creek Lodge is a 21 unit motel and restaurant located in Clinton, Henry County, Missouri. Mr. Fernando Lomeli is the owner/operator. The wastewater treatment facility is an extended aeration treatment plant with no chlorination. Sludge is disposed of by a contract hauler. The receiving stream for the treatment plant is an unnamed tributary to Harry S. Truman Lake, whole body contact. The MSOP expires on February 6, 2008.

This facility has a history of noncompliance. An inspection on May 3, 1999, by department staff from the Kansas City Regional Office (KCRO), revealed the discharge from the treatment plant to be septic and malodorous. The chlorination system was not functioning, as required by the MSOP, and collected water samples exceeded permit effluent limits for total suspended solids (TSS), biochemical oxygen demand and ammonia.

The following violations have occurred since 1997: exceeding permit effluent limits for fecal coliform, failure to comply with effluent monitoring as required by the MSOP, failure to submit discharge monitoring reports since 1997, and failure to properly operate and maintain the treatment plant. There are also outstanding permit fees and there is no disinfection (chlorination) as required in the MSOP. In addition, this facility is also under enforcement with the Public Drinking Water Program. Three Notices of Violation have been issued to this facility for the above stated violations.

On three separate occasions department staff from the KCRO collected water samples from Tebo Creek's outfall. The results exceeded (400 col./100ml) for fecal coliform on each occasion (47,800/100ml, 140,000/100ml and 267,000 col./100ml). On April 30, 2003, the U.S. Corp of Engineers contacted department staff in regard to a swimming beach, less than 1 mile from Tebo Creek, which had elevated levels of fecal coliform. Water samples collected by KCRO confirmed Tebo Creek had exceeded permitted effluent limits for fecal coliform, which resulted in a Notice of Violation being issued on May 19, 2003.

The Water Pollution Control Program enforcement section has sent two letters and conducted at least 1 telephone call offering an out of court settlement to the owner to resolve the violations of the Missouri Clean Water Law occurring at Tebo Creek Lodge.

It appears that further efforts to resolve the violations of the Missouri Clean Water Law occurring at the Tebo Creek Lodge Bar & Grill would be futile. It is recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

Chairman Herrmann stated there was a request from Mr. Terry Hume, Tebo Creek, to address the Commission.

Mr. Hume is with CTR Consulting – Training – Resources. He stated he was there on behalf of Tebo Creek Lodge Bar & Grill.

Mr. Hume addressed a few of the issues raised by DNR concerning non-compliance. He presented a letter he wrote to DNR on January 26, 2004 in response to the violations. Mr. Lomeli is the sole proprietor of Tebo Creek Lodge Bar & Grill. He maintains a strong desire to do what is required by the federal, state, and local government agencies. Mr. Lomeli is somewhat confused as to the specifics listed in the violations and in no way wishes to be non-compliant. His intent is to be compliant in all respects of the law.

Mr. Hume believes that the violations are a result of misunderstanding and knowledge of the requirements to achieve compliance. Mr. Lomeli thought he was compliant. He suspects up-stream wastewater contamination from other sources not associated with Tebo Creek Lodge Bar & Grill. CTR will provide compliance services for wastewater compliance and assist in eliminating future violations.

Mr. Hume referenced a letter written in 1997 to the previous owners of the lodge. The letter stated the intent of the contamination was from up-stream due to residential housing. These three houses are non-compliant in Henry County's requirements of septic tank and lateral configuration. They are unrestrained with no septic system, with total discharge into the ditch that runs on the north side of Tebo Creek Lodge. The ditch at Tebo Creek Lodge flows from the west to the east. East is Truman Lake. As the ditch fills with water and carries all the affluent from the residential housing, it pools at the outfall of Tebo Creek. Tebo Creek's outfall is at least 50 percent under water at all times. With the standing water and the contaminants from upstream, it backs up into the outfall of Tebo Creeks. Mr. Hume believes there is no possible way that there can be an accurate sampling from that outfall without obtaining samples from the upstream water. Mr. Hume suggests that the total elimination of citations, based on that aspect, be eliminated. There is no contamination from Tebo Creek. To further prove this point, they plan to write their own samples in April when residents come down to occupy the residence above the stream. They will submit samples pulled before the flow of water enters Tebo's property, pull samples directly from the outfall itself, pull samples directly from the dechlorination tank and then samples before it goes into the treatment system. From that they will have a positive definitive number, as provided by Engineering Survey and Services (ESS) out of Columbia, that there is no contamination that is being contributed by Tebo Creek.

Mr. Hume reported they have determined a .01 percent chlorine residuals that they discovered in one of the documents submitted by DNR. That determines right there that there is chlorination being done. They intend to provide a maintenance program and a weekly inspection program that Mr. Lomeli will abide by. There will be total documentation concerning this so that they know exactly what the chlorination is. They will know exactly what the chlorine residuals will be determined by monthly evaluations and an analysis by ESS, which is a state registered certified lab.

In 2000, the business caught on fire. There are no tax records because the business was not in existence during 2000 and 2001 because of remodeling. Mr. Hume shared Mr. Lomeli's profit and loss statements and photos of the waste water.

Mr. Lomeli has a permit issued to him by DNR. DNR can't find proof that Mr. Lomeli paid his fees. Mr. Hume recommended that Mr. Lomeli pay his fees again. He has brought his fees up-to-date. Mr. Lomeli is remiss on that fact that he has not done his reporting as stated. He is not certain on how he is supposed to do that. CTR is handling that for him. CTR will present all documentation that is necessary to comply with

monitoring. They will do the monthlys and submit the forms. They will also verify and document the sludge pickup and the form that is associated with that.

With all the things that CTR is doing to try and help this individual, Mr. Hume hopes that the Commission understands his situation and agrees to eliminate any citations.

Chairman asked if there was anyone present from the Kansas City Regional Office.

Mr. Mohammadi reported a brief chronology of the event. In May 1999 a compliance inspection was conducted and sent to the owner. The department did not hear anything back. On May 18, 1999 a notice of violation was issued to the owner. The department did not hear anything back. In June 2002, KCRO met with the owner and helped him to fill out the permit transfer form and showed him how to collect samples for analysis. In July 2002, KCRO staff collected samples and results showed non-compliance and sent it to the owner. In May 2003 another notice of violation was issued to the owner. In August 2003, a sample was collected and showed non-compliance. In September 2003, a notice of violation was sent to the owner. The department has not heard anything. The Water Protection Program in October 2003 sent a letter to the owner proposing a settlement outside of court. The department has not heard anything. In January 2004, the department contacted the owner again, and the department did not hear anything. On January 26, 2004, when the owner hires CTR, that is the first time the department heard from Tebo Creek Lodge Bar & Grill.

Mr. Mohammadi introduced Mr. Jody Mayes from KCRO. Mr. Mayes reported he did the sample collection for fecal coliform that was collected for this case. He also helped the owner fill out the permit application.

Chairman Herrmann noted the exceedances are considerably over (47,800, 140,000, and 267,000) which is an exceedance over 400 cfu's per 100 ml. He stated it is his personal opinion the best way to resolve the apparent conflict is to refer it to the Attorney General at which time Mr. Hume can present arguments on behalf of the owner.

Mr. Hume asked for a stipulation on citation for one year.

Chairman Herrmann stated he didn't know if that was in the Commission's jurisdiction.

Mr. Hume restated the question to Ms. Amy Randles. Can they have a stipulation on the citation based on the fact that they are going to take care of all Mr. Lomeli's problems and do all his recording for one year?

Ms. Randles stated yes the Commission has the authority to enter into any deal that it wants to directly with the operator. She doesn't know that Mr. Hume can be Mr. Lomeli's representative here. The way enforcement referrals usually work is, it is simply sent over to the Attorney General's Office to take action. The Attorney General's office always, unless it's something that requires immediate action, will be willing to entertain

settlements and things like that. Typically what happens is that referrals occur and then you attempt to negotiate something if you want to help Tebo Creek ward off an actual court action. That is the way it is usually done.

Chairman Herrmann it's part of a negotiation process that the Attorney General would conduct. At which time you have the opportunity to present your view points and your negotiating points and the Attorney General will make that decision as to your comments.

Commissioner Greene asked Mr. Mohammadi that this letter was dated January 26 from Mr. Hume. Has there been any site visits since then?

Mr. Mohammadi replied no there has not.

Chairman Herrmann entertained a motion.

Commissioner Minton moved to accept staff's recommendation to refer the matter to the Attorney General's Office until such time has been give to Tebo the opportunity to work out a reasonable settlement. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Peerless Park DLF Variance

Richard Laux, Chief of the Permits Unit reported that on February 12, 2004 a Variance Application and fee were received from Integrated Services, Inc. regarding their Peerless Landfill, Inc. site in Valley Park near St. Louis. The application is seeking relief from 10CSR20-7.015 (9) (G). That section of the regulations requires the department to set limitations on industrial sites using federal effluent guidelines or "best professional judgement." Staff members have investigated the request and offer the following findings:

1) The existing permit has suspended solids (TSS or NFR) and settleable solids (SS) limitations on outfalls 003 and 004, consistent with similar facilities statewide.
2) The application requests the suspended and settleable solids effluent limitations be entirely removed and asks that the existing wetland area receiving the current discharge be allowed to be used as a settling basin.
3) The wetland area in question appears to be the result of prior sand mining operations. The applicant has received a COE 404 permit and a department 401 certification that will allow the "filling" of this area. The applicant wishes to fill the area in question in part by using it as a settling pond/area.
4) The wetland area in question does not normally have a surface discharge to the Meramec River, but several "gaps" in the natural levee might allow for discharges from the area during high river stages. Staff has seen the wetland in question physically connected to the Meramec River during 1993 and 1995.

Staff recommends the Commission grant preliminary approval subject to the following conditions:

1) The proposal should receive public notification in the area.
2) Existing effluent limitations and monitoring requirements for outfalls 003 and 004 should continue to apply directly to any discharge from the wetland area to the Meramec River or it's tributaries other than the wetland permitted by the COE to be filled. TSS and SS limitations will not apply to discharges from outfalls 003 and 004 that remain in the wetland area covered by the COE 404 permit but monitoring for those parameters should continue.
3) The variance should end when the COE permit to fill the wetlands expires in 2007.

Mr. Laux asked if there were any questions.

Mr. Tom Gredell, President of Gredell Engineering and Resources addressed the Commission. They prepared the variance request on behalf of Peerless Demolition Landfill. It's a construction and demolition debris landfill permitted by DNR's Solid Waste Management Program and St. Louis County. It's owned by Integrated Services, Inc. operated by Peerless Landfill, Inc., both owned by George and Dale Behnen. They bought the facility in 1994. Dale Behnen was present.

Landfilling began there in 1968. Approximately in the 1970's they got solid waste and NPDES permits for the facility. This was under the previous owner. In the late 1990's Gredell Engineering assisted the Behnens in pursuing and obtaining a solid waste permit to vertically expand the landfill through the department's Solid Waste Management Program. Part of that included two distinct discharges off the back of the facility in a complex system of benches and terraces to control the storm water runoff. The Behnens are at the point now where they need to build those and start building the storm water system and get the two discharges going into the inactive sand and gravel pit. They did a cost analysis in the variance request to look at what the cost will be to put in a two and a half acre storm water pond. It would be significant partially because a lot of fill in would have to take place in order just to build a pond that met the requirements of the treatment device. Therefore, the request is to discharge storm water without a limit on total suspended solids and settleable solids until the fill in is complete.

Chairman Herrmann indicated several gaps were mentioned in the natural levy. Remembering the 1993 and 1995 floods, how much more frequently is the river getting into those gaps?

Mr. Laux replied they don't believe the river has been into contact with this wetland area since 1995. During 1993 and 1995 the department was still able to get to the site. It was still accessible even during those flooding events. A sample could be taken if needed. It would take a flood with the magnitude of 1993 or 1995 before you would see that. Most of that flow would be into the wetland from the Meramec rather than out of the wetland

and into the Meramec. When they are physically connected, there's a potential for a discharge.

Commissioner Easley asked if the gaps could be filled or is it cost effective?

Mr. Laux replied he is not sure if the Corps would permit them to be filled. It wasn't permitted to start with. It's not one that's being maintained by the corps or by any agency. There's been some discussion to take it out completely and filling all the wetlands. Several agencies have characterized these wetlands as attractive nuisances for waterfowl being as they're next to sanitary and demolition landfills. The water quality is not too bad. There is the permit to fill this area and probably several of the adjacent ones will be the same way.

Chairman Herrmann asked if there were any other questions.

Commissioner Easley asked does Integrated Services, Inc. have any problems with the condition that the Commission would approve them under?

Mr. Gredell replied no they don't. They have been discussing this with department staff for about a year and a half now. The old permit expired and they renewed it. At that point in time wanted to modify it to take these new features into account. They issued the draft permit last October. They commented that they didn't think they would be able to meet those discharge limits at that point because of the close proximity of the landfill to the inactive sand and gravel operation. At that point in time they started discussing and were made aware of the variance request. Yes they are aware of the conditions.

Chairman Herrmann entertained a motion relative to the variance application of the Peerless Park DLF.

Commissioner Perry made a motion to accept the recommendation of staff with the conditions proposed by staff for the variance to Integrated Services, Inc. Commissioner Greene seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Duckett Creek Variance

Mr. Laux reported staff received a Variance Application from Duckett Creek Sanitary District on January 27, 2004. A review of the document indicated it lacked signature and notarization. The application was returned for these items and was received back by the department when complete. The application requests relief from 10CSR20-7.015 (5) (A) which prohibits "new" discharges to "Metropolitan No-Discharge" streams such as Dardenne Creek.

Staff members have investigated this request and have the following findings:

1) The proposed discharge is to a tributary to Dardenne Creek that enters the section of Dardenne Creek designated as "Metropolitan No-Discharge."
2) The entire length of Dardenne Creek was originally included as Metropolitan No-Discharge.
3) When the city of New Melle needed to build a new waste water facility for this formerly unsewered community in the 1980's, they requested the Commission to remove the segment of the stream they wished to discharge to from inclusion in the "Metropolitan No-Discharge" designation. The Commission did remove that segment from the designation but did not explain how the regulatory language (which indicates that the "entire basin" of a Metropolitan No-Discharge stream is included) would be interpreted for Dardenne Creek.
4) This applicant would appear to be allowed under Commission rules to build and operate a conventional secondary treatment plant and pump the effluent into the same segment of Dardenne Creek as the existing discharge from New Melle (in the segment "removed" from Metropolitan No-Discharge designation).
5) However the District is willing to and is proposing to build a more advanced treatment system, if allowed, to discharge directly to a section of Dardenne Creek which is in the "Metropolitan No-Discharge" segment. The application indicates that lower (more restrictive) effluent limitations reflecting the greater level of treatment to be provided would be acceptable to the district.

Staff recommends the Commission grant preliminary approval subject to the following conditions:

1) The proposed variance receives public notification in the area effected.
2) The permit for the facility should contain limitations reflecting advanced treatment and disinfection.
3) The permit should include in-stream monitoring to verify any negative impacts to the receiving stream.

The staff would also like direction from the Commission regarding the interpretation of the "basin" affected by the "Metropolitan No-Discharge" designation.

Chairman Herrmann asked if there was a map or graphic representation of the location.

Mr. Laux reported there should have been a map in the application. The physical distance between the two trips coming in, one is within 100 yards of the designation beginning and the other is a couple hundred yards above. So there are talking three or four hundred yards in between. They essentially end at about the same place on Dardenne Creek. In one you would pump it up over the hill and meet 30/30 (BOD/TSS) limitations and the other you would have gravity drain and meet 10/15 limitations.

Chairman Herrmann asked when you talk about the other you're talking about the other Duckett Creek Plant?

Mr. Laux responded what they have is a choice. They have one plant location. Their choices are pump station, pumping over the surface water divide, then gravity to Dardenne Creek or just put it in the nearest tributary and go to Duckett Creek by gravity. The distance in between those is less than a quarter mile.

Chairman Herrmann asked what is the physical separation between that and the present Duckett Creek Plant?

Mr. Tom Engle, Duckett Creek Sanitary District, responded they have sewered to about two miles from there and that basically is the end of their system and that completes in total what he can control in his main plant. He can't go out any further and extend the sewers. 1) Because the plant will be a capacity. 2) He hasn't got the size piping to get to the plant at this point.

Chairman Herrmann said he is more interested in the location of the discharge, one to the other.

Mr. Engle reported unfortunately he only has one copy of the map. He assumed that they would give everyone a copy. In the heavier blue line is Dardenne Creek. There is a lighter blue line that goes north and west of that, which is the tributary. Outlined in red is the basin that has been annexed by the City of O'Fallon and where they plan to have significant development in that area. They also plan to put two junior high schools and an elementary school in that area. What they are saying is that the development will come in the upper branch of Dardenne Creek. Once they get down to the bottom and to Highway DD, what they are asking him to do by the rules is to pump it back where it just came from and down around the corner and enter that effluent into Dardenne Creek at that point and let if flow down the creek. That would be legal according to the rules. The problem is he is going to have to now put in a $2 million pump station to pump it back and put it in the same creek and have it travel down the creek to the same point that he was going to release it anyway. What they have proposed is, instead of doing a traditional package treatment plant, that's a 30/30 plant, they will spend the extra money to put in a new MBR plant and they would accept and guarantee effluent 5/5. They have done some stream analysis. The stream is about 10 or 12. They will be putting effluent in the stream that is three times cleaner, or they can pump it all the way back, spend an extra $2 million they don't have, so they'd have to go with a traditional 30/30 system.

Mr. Engle explained what they are really trying to do is have development in a rural area over the next five to ten years that's probably going to end up around 3,000 homes potentially. Normally what would happen is you would go out and put package treatment plants here and there and everywhere until eventually you get enough development that you can build a large plant. In the meantime, that really is dumping 30/30 effluent into the streams. What Duckett is really trying to do is they are willing to spend the extra money. There are about 1,500 new MBR plants around the world. Mainly when they talk about evaluating them in terms of BLD and TSS, they basically saw they don't even look at that because it's so low they can't even measure it. The effluent coming of those

things is just excellent. The problem with them is there are about three times as much as a traditional package treatment plant. Duckett is willing to go to the effort and expense to use this new technology to protect the rivers and streams in that area. If they are forced to put in pump stations to pump it all to one area because of this rule, then it really forces the cost up to the point that they almost have to go back to a 30/30. They are being forced to put in a pump station, pump it all they way back on the other side of Highway DD, release 30/30 there and come right back down the creek to where they were going to discharge anyway. If they have the variance they can go ahead and put in a plant that has ten times better effluent, and put it in a place where it's not going to go past all these residences and potential developmental areas.

Chairman Herrmann stated their corporate limits encompass this particular area.

Mr. Engle responded they have annexed the whole area all the way from Highway N to Highway Z and all the way back. The overall plan is they can't afford to come out to that area and spend $35-40 million to put a plant all the way down on the Missouri River and pump it all the way up. It would bankrupt them. The other alternative is you put all these little package treatment plants around. They don't want to do that because it's not good for the environment. There trying to pick three or four locations where they think development is going to happen and try to establish these new MBR plants, which is going to allow for development to happen gradually for the plants to be able to cover certain areas and eventually be able to get the traditional package treatment plants. There are a couple of lagoons in the Melle area that need to come off.

Chairman Herrmann asked where are the lagoons in the Melle area?

Mr. Engle responded there is one that serves the city of New Melle, as you go further, there is a development called Fiddlesticks, which is a development and a golf course area, they both have lagoons. They want to go with an overall plan that will incorporate this new MBR technology into three or four smaller regional plants that will serve the area.

Chairman Herrmann asked Mr. Engle if he's willing to guarantee to the department the 5/5 discharge?

Mr. Engle responded yes, no question.

Mr. Engle stated he has provided technical information to the department, and the department has already approved one MBR plant that they are doing for Francis Howell High School. That plant should be on line in about two weeks. That will be the first one in Missouri. He would be more than happy to provide a packet of information or come back sometime and do a slideshow on the MBR.

Mr. Jim Hull asked Mr. Engle when he does that, could he bring something that outlines the extent of their sewer district? Mr. Hull was trying to nail that down and couldn't quite get the correct information to answer Chairman Herrmann's question.

Mr. Engle responded yes, he could do that.

Mr. Kenneth Morgan, City of O'Fallon, reported the city would like to extend its endorsement of the variance. It helps the city in their ability to manage the growth in their area. A large part of the area has been annexed into the city and they are in the process of evaluating approximately 1,700 homes in that area. It's very difficult for them as a municipal agency to provide the physical infrastructure that allows them to provide conventional service in that area. This is one of the options that will allow them to at least keep in pace with the growth to provide the service necessary. Mr. Morgan added that Duckett Creek has been a very good partner and component of the community as well.

Commissioner Perry asked Mr. Laux about the past action of the no discharge and exactly what that meant.

Mr. Laux reported that is a separate issue that he asked be put in there to try and get some direction as to whether the Commission would agree with the way that both the permitting group and what used to be the planning group had been interpreting.

Commissioner Perry stated that the department is asking for a variance from a segment that says no discharge.

Mr. Laux drew Commissioner Perry a map.

Commissioner Perry mentioned a group coming to a Clean Water Commission meeting wanting to designate the whole area as no discharge.

Mr. Engle reported that was Gerry Boehm who is with the Greenway network. He supports this plan. The Greenway network is supporting this. Mr. Engle stated they will not run a traditional package treatment plant. It's not good for the ecology. They cannot stop developers from putting in something. They want to control that area to make sure it's served by MBR technology rather than a 30/30 plant.

Chairman Herrmann stated we might come back to the question if the trunk sewer is there, we might come back to an interpretation of the state law again if its service is available and nobody is going to put in a subdivision treatment plant.

Mr. Engle said membranes have been used for years in water treatment. Instead of the membranes going to a clarifyer where it all depends on bugs and everything is outside, this puts the membranes into your tank. The water pushes past the membranes. The only thing that can get inside the membrane is clean water. It keeps out everything else. Chairman Herrmann stated staff recommends the approval based on public notification, permit for the facility should contain limitations reflecting advanced treatment and

disinfection, and include in-stream monitoring to verify any negative impacts in the receiving stream.

Commissioner Hauser made a motion to accept staff recommendation. Commissioner Greene seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Staff Updates

Permitting Update

Peter Goode, Chief of Permits and Engineering, reported on the information contained in the Centralized Application Tracking System. The first report showed performance from July 1, 2003, through December 31, 2003, and a similar report from January 1, 2004, through February 26, 2004. There was also the Permit Issuance Trend graph, and Permit Backlog Tracking graph.

Mr. Goode explained at the time he put together the Permit Backlog Tracking report, there was one data point missing at the very end that represents data up to the middle of February. The last data point there shows a backlog of 704 permit applications. There should be one point following that for February and it's 697.

Mr. Goode reported the department recently issued two new general permits. They are R22A, which is for storm water discharges from Primary Lumber and Wood Products Industries and also R203 for Ferrous and Non Ferrous Foundaries.

Additionally, within the Hinkson Creek Basin in Columbia, suffices say the department has been issuing general permits for land disturbance. One of the outcomes of dealing with that situation is the department has discovered there are some inadequacies in the department's general permits for land disturbance. The department does have four different general permits that they are issued for land disturbance. They range from standard land disturbance permits to land disturbance permits issued to local or government authority for all the activities that they and their contractors partake in, for private contractors that do land disturbance within an area that has its own local permitting authority, and another general permit for land disturbance activities that occur near sensitive water bodies. One of the things the department has determined is they don't have a permit to cover land disturbance activities that would potentially impact in 303(d) listed waters. That's one of the things they dealt with in Columbia. They also found out a few other inadequacies, by working through the Columbia issue, with their general permits. At the moment they are putting together a laundry list of items that need to be addressed or corrected in those general permits. The department will begin stakeholder meetings to update and revise those general permits and it's likely they may add a fifth general permit for land disturbance activities.

Water Quality Standards – Staff Update
Phil Schroeder explained what continues to form the scope of the department's rulemaking effort as well as explaining what continues to be their schedule for trying to get this completed.

The scope continues to focus on three efforts, one being resolving eight program elements that were disapproved by EPA in September 2000. Also, they are trying to address claims that were identified in a lawsuit filed by the Missouri Coalition for the Environment against EPA. Some of those items include some of the elements that EPA has formally notified the department of program disapproval. There are also a number of items that EPA has notified the department about needing to be reviewed under a normal triennial review process for update or clarification, which they are in the process of doing. That will continue to be their scope until directed otherwise by the Commission.

The schedule for rulemaking continues to be a target date of July 15 for proposed rulemaking. They are trying to figure in a process by which they can extend the public comment and participation period so they are looking at a possible final effective date of July 2005 for the rulemaking effort.

As they move through the rulemaking process, they are going to proceed to develop procedures for use attainability analyses. That comes into play when they are looking at designation of whole body contact on certain waters in the state. They are also going to develop some stakeholder meetings while looking at the Antidegredation Policy in the state of Missouri.

Standing Items

Chairman Herrmann stated due to the schedules of some of the Commissioners, they will move on down the agenda to Other.

Other
Commissioner Minton stated that a long time ago they had a policy objective presentation by the staff, which he thought was very good. A timeline of goals and objectives for the Commission and department. Because it is very difficult to keep up some of these things, if it would not be too much of an inconvenience for staff, as part of the briefing packets, he would like to have a list of those items that they have on the table. For example anything involving rulemaking, 401 certification, things in the past they have addressed that have taken a long time to resolve, the nationwide permits with the Corps of Engineers. He would like for staff to research and list those things. Next to the items for example, indicate held three meetings regarding nationwide permits, still have ongoing discussion with the Corps, or nothing done this month regarding action. He doesn't want to discuss it each month, but it's simply a reminder for the Commissioners and staff the things they have in front of them and it provides a bit of discretion so they don't overload staff's plate and at the same time the public can be aware of all the issues they are trying to address. That way they can check off an item when they are done with it.

Jim Hull added sometimes it's a little difficult to keep up with everything even in the program so he can understand what Commissioner Minton is saying. Mr. Hull suggested going through the list verbally at the April meeting to talk about it, and then at future Commission meetings after that note if there has been any change.

Commissioner Perry encouraged the department at the initial drafting of a rule, to have some stakeholder meetings to get some input as to what the general policies are.

Mr. Hull agreed with Commissioner Perry and reported to keep in mind, on the Water Quality Standards, there has been a lot of discussion about that particular subject over a number of years.

Mr. Chris Schwedtmann, from Midwest Environmental Consultants, commented on some initiatives some industry clients are trying to start in conjunction with the Permitting Section. They have discussed with Mr. Peter Goode, a new permit by rule type for the heavy construction industry with members of the Associated General Contractors, and the Limestone Producers. Address permits for asphalt plants, concrete plants, quarries, and some land disturbance activities through a permit by rule type process with the idea of trying to eliminate the process of permitting individual sites under a repetitive process with the same conditions over and over again. They have to go through all the administrative work within the program as well as the companies to get a permit that's exactly the same every time. They would like to come to an agreement, get a workgroup that is made up of industry, the program, as well as members of the Commission. Going along with to develop rule conditions that are written directly into the rule and those then become the company's permit and they operate under those with a notification process. The industry side is willing to pay the same amount of fees they are currently paying for an individual permit for the permit by rule and based on the site notification process. This has worked positively on the air pollution side.

Budget and Legislative Discussion

Jim Hull reported briefly with the Governor's proposed budget, the Water Protection Program lost approximately four FTE's. That is mainly going to impact the Stormwater Program, and Letters of Approval. That cut back will be felt. There was a house markup on the budget scheduled for that evening. They may be seeing additional changes. The Stormwater Program was winding down because bonds weren't being sold. They already met with the Department of Agriculture on what the impact of that will be and how they can work through it with small operations still being able to continue to stay in operation and get loans and insurance without an official Letter of Approval from the department.

There are two bills the department is interested in. One is SB 901, which transfers the authority on Underground Storage Tanks from the Clean Water Commission to the Hazardous Waste Commission. It's felt this is necessary to help implement the plans for Risked Based Corrective Action. The Senate Substitute for House Committee Substitute

for House Bill 1177 continues changes to the CAFO law. One concern is changes to the definition waters of the state and non-point source is being removed in one certain area.

Chairman Herrmann asked what is the status of SB 901?

Mr. Goode replied they met with the bill's sponsor. There is some consensus language drafted. It's going to the senate committee and should be voted on. It includes language now that specifically identifies that the Clean Water Commission does not have the authority to oversee the cleanup work its self. That will all reside with the Hazardous Waste Commission. There has been language added to make it more explicit so there are no interpretation problems. They added language that will also do the same for any sort of risk-based hazardous waste cleanup action.

Public Comment and Correspondence

Mike Alesandrini, St. Louis RCGA, spoke in support of looking for ways to streamline and make things easier. There is a process going on in the Air Pollution Control Program called the Air Quality Advisory Forum. They meet every four to six weeks and take on discrete issues along the lines of developing permit by rule. There were challenges in the Air program along the lines of what constitutes significance levels etc. This group focused on the issues and gave themselves a 90-day timeline. It appears to be an effective program.

Future Meetings

Mr. Hull stated the next two meetings of the Commission are scheduled for April 28 and June 2 at the Capitol Plaza Hotel in Jefferson City.

Chairman Herrmann asked if there was anything else to bring before the Commission?

Mr. Robert Brundage asked the Commission to consider, on the Water Quality Standards and the Whole Body Contact Issue, if there is an opportunity to look at that issue in another light, he would like the Commission and DNR staff to consider implementing at least two or three different levels of Whole Body Contact on the type of stream and degree of contact.

Chairman Herrmann declared the meeting adjourned.

Respectfully submitted,

Jim Hull
Director of Staff